

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

SHARON K. HENGgeler and
DAVID RANDALL, On behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

BRUMBAUGH & QUANDAHL
P.C., LLO, KIRK E. BRUMBAUGH,
MARK QUANDAHL,
LIVINGSTON FINANCIAL, LLC,
MIDLAND FUNDING, LLC, d/b/a
ENCORE FUNDING, LLC, A
Fictitious Name, and
LVNV Funding, LLC,

Defendants.

Case No.: 8:11-CV-334

**MOTION FOR LEAVE TO
TAKE EXPEDITED
DEPOSITIONS OF
WITNESSES PROFFERED BY
MIDLAND FUNDING, LLC
IN MOTION TO STAY AND
COMPEL ARBITRATION
OR TO DISMISS IN FAVOR
OF ARBITRATION (Filing 45)**

COME NOW the Plaintiffs herein by and through counsel of record with a Motion for Leave to take the depositions of Christina Paperman, Kyle Hanna, and Carrie Darling. These individuals provided Affidavits in Support of Midland Funding, LLC s (Midland) Motion to Stay and to Compel Arbitration, or Alternatively, Motion to Dismiss in Favor of Arbitration. (Filing No. 45) In support of this Motion the Plaintiffs state the following:

1. Midland filed a lengthy Index in Support of its Motion to Stay and Compel Arbitration at Filing No. 46. Affidavits are included in the Index.

2. Affiants Christina Paperman, Kyle Hanna, and Carrie Darling were previously unknown to the Plaintiffs and their counsel. Each has provided an Affidavit in Support of Midland Funding, LLC's Motion to Stay Proceedings and to Compel Arbitration or Alternatively, Motion to Dismiss.

3. No scheduling order has been entered and no Rule 26 Disclosures have been made by any party so no discovery can otherwise be conducted at this time.

4. Plaintiffs will be prejudiced if Defendant's new material is presented without Plaintiffs having the opportunity to depose the Affiants. None of the items included in Midland's Index were previously produced to the Plaintiffs.

5. The foundation and veracity of their respective testimony has not been established and Plaintiffs have not been allowed any opportunity to challenge or test the validity of their respective testimony.

6. Midland's Motion and Brief depend heavily on the Affidavits of these individuals.

7. Plaintiffs counsel wishes to take the deposition of these witnesses for the specific purpose of verifying their alleged knowledge, foundation and contents of the testimony proffered in their respective Affidavits. (Doc. Nos. 46-1, 46-4 & 46-5)

8. Movant Midland Funding, LLC framed its Motion (Doc. No. 45) as one to stay these proceedings in favor of arbitration and most importantly a motion to dismiss in favor of arbitration. Midland's motion is tantamount to one brought pursuant to Fed.R.Civ.P. 12(b)(6). Further, with the introduction of the Affidavits of Christina Paperman, Kyle Hanna, and Carrie Darling Midland has presented materials and matters outside the pleadings of this case.

9. Pursuant to Fed.R.Civ.P. 12(d) when matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present material that is pertinent to the motion.

10. Plaintiffs contend that the Affidavits of Christina Paperman, Kyle Hanna, and Carrie Darling fit precisely into this category and that Plaintiffs should be allowed the opportunity to depose these witnesses in order to be

given a reasonable opportunity to present material that is pertinent to Midland's Motion.

11. Plaintiffs' Opposition is due on March 19, 2012, and these depositions must be taken soon so that there is enough time to obtain the transcripts and for counsel to make use of the depositions while writing the Opposition.

12. Given the limited time frame Plaintiffs request expedited depositions of these witnesses, within two weeks of the Order herein or March 7, 2012, whichever date is sooner.

13. Plaintiffs sought the consent of counsel for the Defendants for the relief requested and for when these depositions could be taken. Plaintiffs were informed that a response would be forthcoming on February 13, 2012. However, no response or objection has been received from counsel for the Defendants, and Plaintiffs are compelled to file this Motion.

WHEREFORE, the Plaintiffs request an order of this Court granting Plaintiffs leave to immediately take the depositions of Christina Paperman, Kyle Hanna, and Carrie Darling so that the deposition testimony may be used in Plaintiffs' Opposition to Midland's Motion to Stay and to Compel

Arbitration, or Alternatively, Motion to Dismiss in Favor of Arbitration.

(Filing No. 45)

Dated this 14th day of February 2012.

Sharon K. Henggeler and David
Randall, On Behalf of themselves and
all others similarly situated, Plaintiffs,

By: /s/William L. Reinbrecht
William L. Reinbrecht, #20138
Pamela A. Car, #18770
Car & Reinbrecht, P.C., LLO
720 Frederick Street, Suite 105
Omaha, NE 68124
(402) 391-8484
E-mail: pacwlr@earthlink.net

And

O. Randolph Bragg
HORWITZ, HORWITZ & ASSOC.
25 East Washington St., Suite 900
Chicago, IL 60602
(312) 372-8822
(312) 372-1673 - Fax
ATTORNEYS FOR PLAINTIFFS
AND THE PUTATIVE CLASS

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2012, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the following:

Douglas E. Quinn
J. Scott Paul
MCGRATH NORTH MULLIN & KRATZ, P.C., LLO
1601 Dodge Street
First National Tower, Suite 3700
Omaha, NE 68102

Cory J. Rooney
BRUMBAUGH & QUANDAHL, P.C.
4885 S. 118th Street, Suite 100
Omaha, NE 68137

Joseph E. Jones
Luke J. Klinker
Elizabeth A. Culhane
Fraser Stryker, P.C., LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102

And I certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A

By: /s/William L. Reinbrecht
William L. Reinbrecht #20138
Car & Reinbrecht, P.C., L.L.O.
8720 Frederick Street, #105
Omaha, NE 68124
1 (402) 391-8484